

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
Environmental Systems ) ASBCA No. 53412  
)  
Under Contract No. DAAB07-98-C-Y007 )

APPEARANCES FOR THE APPELLANT: Ross W. Dembling, Esq.  
David S. Black, Esq.  
Holland & Knight, LLP  
McLean, VA

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA  
Chief Trial Attorney  
CPT Parag J. Rawal, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PAUL  
ON RESPONDENT'S MOTION TO DISMISS

Appellant Environmental Systems (ES) appeals the contracting officer's refusal to decide its convenience termination claim on a contract terminated for default. ES appealed the termination for default, and the Board docketed that appeal as ASBCA No. 53283. No hearing has been held on the default termination, and, accordingly, no decision has been reached in that appeal.

After ASBCA No. 53283 was docketed, appellant submitted a convenience termination claim to the contracting officer in the amount of \$1,145,678.00 (ex. 1 to mot.). The contracting officer declined to reach a decision on the claim because the Board had not issued an opinion on the default termination (ex. 2 to mot.). ES subsequently appealed the contracting officer's action, and the Board docketed the appeal as ASBCA No. 53412 (ex. 3 to mot.).

Respondent filed a motion to dismiss the appeal as premature, and the parties thoroughly briefed the motion. We grant the motion. It is axiomatic that we cannot decide a convenience termination claim until the issue of the underlying default termination has been resolved. *Aerosonic Corp.*, ASBCA No. 42696, 91-3 BCA ¶ 24,214 at 121,117.

CONCLUSION

Respondent's motion is granted. The appeal is dismissed without prejudice.

Dated: 3 October 2002

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MICHAEL T. PAUL  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 53412, Appeal of Environmental Systems, rendered in conformance with the Board's Charter.

Dated:

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EDWARD S. ADAMKEWICZ  
Recorder, Armed Services  
Board of Contract Appeals